

Message Text

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TO USMISSION EC BRUSSELS

INFO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPEN HAGEN

AMEMBASSY DUBLIN

AMEMBASSY LONDON

AMCONSUL HAMBURG

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY ROME

AMEMBASSY THE HAGUE

USMISSION GENEVA

USMISSION OECD PARIS

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C O R R E C T E D C O P Y (OMISSION ADDRESSEE)

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TAGS:ETRN,EEC

SUBJECT:MARITIME TRANSPORTATION - EUROPEAN PROBLEMS WITH US
REGULATIONS ON CONTAINER TRANSHIPMENT

REF: EC BRUSSELS 1221

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1. THE DEPARTMENT, WHICH HAS CAREFULLY REVIEWED LOERKE

PAPER IN CONSULTATION WITH CUSTOMS, CONSIDERS THE FOLLOWING POINTS AS APPROPRIATE TO NOTE IN MISSION'S RESPONSE. SPECIFICALLY, THE DEPARTMENT CONSIDERS LOERKE'S USE OF WORD "INTERPRETATION" AS MISLEADING BECAUSE US CUSTOMS REGULATIONS ARE BASED ON US STATUTORY AUTHORITY DELINEATED BY CONGRESS. THIS STATUTORY AUTHORITY DOES NOT IN MOST INSTANCES ALLOW FOR GREAT FLEXIBILITY IN THE APPLICATION OF THE LAW. THUS WITH REGARD TO REFTEL, PARA 1 AND 2, US CUSTOMS DOES REFUSE TO ALLOW FOREIGN FLAGSHIPS TO TRANSFER FOREIGN "MERCHANDISE" IN CONTAINERS BETWEEN US PORTS BECAUSE THIS IS THE SPECIFIC INTENT OF SECTION 27 OF THE MERCHANT MARINE ACT OF 1920. CUSTOMS, IN SECTION 4.34 OF CUSTOMS REGULATIONS, IS NOT "INTERPRETING", BUT IS APPLYING THE LAW. CONSEQUENTLY, THE PROBLEMS CITED IN PARA 3, REFTEL, ARE NOT THE RESULT OF INTERPRETATION BUT APPLICATION OF THE LAW. (IT IS ALSO WORTH NOTING THAT SEC. 4.34 IS LIMITED TO THOSE INSTANCES WHERE CUSTOMS IS SATISFIED THAT MERCHANDISE HAS BEEN UNLADEN IN ERROR).

2. WITH REGARD TO QUESTION AS TO WHAT EXECUTIVE BRANCH COULD DO TO OVERCOME THE CONTAINER SHIP "PROBLEM" IT IS WORTH NOTING THAT THE US CONGRESS SPECIFICALLY ENACTED LEGISLATION (PUBLIC LAW 92-163 OF NOVEMBER 23, 1971), TO DEAL WITH THE FOREIGN FLAG LASH BARGE SITUATION (ONE OF THE TWO DISCRIMINATORY CHARGES RAISED IN THE PAPER). FURTHERMORE, CUSTOMS IN TREASURY DECISION 74-63 (APPROVED FEBRUARY 7, 1974 AND APPEARING IN THE FEDERAL REGISTER OF FEBRUARY 19, 1974, PAGES 6107-9), AMENDS PART 4 OF CUSTOMS REGULATIONS TO IMPLEMENT SIMPLIFIED PERMIT-TO-PROCEED PROCEDURES FOR LASH-TYPE BARGES AND ALSO TO IMPLEMENT P.L. 92-163. (TEXT POUCHED SEPARATELY) SECTION 4.81(A) (B) OF THESE REGULATIONS NOTES THAT THE FEDERAL REPUBLIC OF GERMANY HAS BEEN EXTENDED RECIPROCAL PRIVILEGES BASED ON PUBLIC LAW 92-163. THUS WHAT WAS PROHIBITED PREVIOUSLY UNDER CUSTOMS REGULATIONS WITH REGARD TO LASH BARGES HAS BEEN MADE THE SUBJECT OF SPECIFIC EXCEPTION UNDER US LAW. CONSEQUENTLY, US CUSTOMS POSITION WITH REGARD TO THE "MERCHANDISE IN CONTAINERS" IS THAT NO EXCEPTION CAN BE GRANTED UNLESS CONGRESS GRANTS CUSTOMS THE LEGISLATIVE AUTHORITY TO MAKE SUCH AN EXCEPTION.

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3. THE DEPARTMENT AND CUSTOMS CONSIDERS THE OTHER ARGUMENT CITED IN REFTEL, PARA 4(A) - I.E. THE ENFORCEMENT OF SECTION 27 AS BEING INCONSISTENT WITH RULINGS BY THE ICC AND FMC - AS BEING NOT RELEVANT BECAUSE CUSTOMS, UNDER ITS LEGISLATIVE MANDATE, IN THIS SITUATION IS CONCERNED ONLY WITH VESSEL MOVEMENT AND USE, WHEREAS THE ICC AND FMC, AS THE LOERKE PAPER CORRECTLY NOTES, ARE THE REGULA-

TORY AGENCIES VIEWING VESSEL MOVEMENT MORE FROM AN
ECONOMIC AND RATE-MAKING POINT OF VIEW.

4. REGARDING REFTTEL, PAPA 6, OFFICIAL IN CUSTOMS DIVI-
SION IN CHARGE OF ENFORCEMENT OF US NAVIGATION LAWS HAS
INFORMED DEPT. THAT EUROPEAN FLAGLINES HAVE NOT APPROACHED
OR DISCUSSED THIS ISSUE WITH CUSTOMS. THIS MATTER ALSO
HAS NOT BEEN RAISED IN THE DEPARTMENT. KISSINGER
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